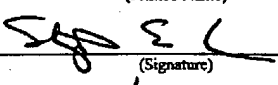


APR 06 2011

Atty. Dkt. No. RDP001U
(043528-0100)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Richard D. Pollak
Title: PROCESS FOR THE COLOR
ENHANCEMENT OF
GEMSTONES
Appl. No.: 09/803,218
Filing Date: 3/12/2001
Patent No.: 6,635,309
Issue Date: 10/21/2003
Examiner: PARKER, Frederick John
Art Unit: 1762
Confirmation Number: 8538

CERTIFICATE OF FACSIMILE TRANSMISSION I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office, Alexandria, Virginia on the date below. Stephen E. Reiter (Printed Name)  (Signature) 4/6/11 (Date of Deposit)

REQUEST FOR RECONSIDERATION OF DECISION ON PETITION

AND

**RENEWED PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF A
MAINTENANCE FEE IN EXPIRED PATENT UNDER 37 CFR § 1.378**

Mail Stop Petitions
Commission for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

Sir:

Petitioner hereby requests reconsideration of the decision mailed February 18, 2011 with respect to the petition filed February 1, 2011 to reinstate the above-identified patent under 37 CFR § 1.378(c). Petitioner submits that, in view of the first petition, the following remarks and the appended documentation, an unintentional delay is established.

DLMR_882392.1

-1-

Atty. Dkt. No. RDP001U
(043528-0100)

Specifically, as described in detail in the attached Supplemental Declaration of Richard D. Pollak, the inventor relied to his detriment on his prior legal representative to advise him of the need for any further action on U.S. Pat. No. 6,635,309 post issuance.

Since the inventor's prior legal representative is a sole practitioner, it is not surprising that there was no apparent system in place to ensure that the Applicant was timely advised of this important post issuance activity. The Applicant should not be made to suffer for this shortcoming of his service-provider.

Furthermore, as a relatively unsophisticated user of the patent system, it was not unreasonable that the inventor relied on his legal representative to advise him of any upcoming deadlines for further action with respect to the '309 patent post issuance.

In addition to the lack of awareness of any impending deadline for the payment of maintenance fees, the inventor encountered numerous other obstacles to the timely payment of the maintenance fees for the '309 patent—especially the automobile accident referred to in point no. 15 of the attached Supplemental Declaration of Richard D. Pollak, and the subsequent medical issues referred to in point nos. 14, 16, 17 and 19 of the attached Supplemental Declaration of Richard D. Pollak.

Petitioner submits that, in view of the showing provided by the petition submitted on February 1, 2011, the remarks provided herein, and the supporting documentation provided herewith, an unintentional delay has clearly been established.

Should there be any questions regarding this submission, the petitions examiner is invited to contact the undersigned agent of record at the telephone number set forth below.

Granting of this petition is respectfully requested. The required maintenance fee and surcharge have been previously paid. However, if any additional fees are required, the Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card

Atty. Dkt. No. RDP001U
(043528-0100)

payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date: 4/6/11

FOLEY & LARDNER LLP
Customer Number 30542
Telephone: 858-847-6711
Facsimile: 858-792-6773

By SEA L

Stephen E. Reiter
Registration No. 31,192
Attorney for Applicant

RECEIVED
CENTRAL FAX CENTER

APR 06 2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of)
RICHARD D. POLLAK)
Docket No. RDP001U)
Serial No. 09/803,218)
Filed: March 12, 2001)
Issued: October 21, 2003)
Patent No. 6,635,309)
For: Process for the Color Enhance-)
ment of Gemstones)
_____)

Commissioner for Patents
Office of Petitions
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF RICHARD D. POLLAK

I, Richard D. Pollak, state as follows:

1. On October 21, 2003, U.S. Pat. No. 6,635,309, issued.
2. I was not aware of the need to pay maintenance fees at the time the '309 patent issued.
3. As the original deadline for payment of maintenance fees for the '309 patent (i.e., April 21, 2007) approached, my legal representative, a sole practitioner, did not advise me of the need to pay maintenance fees.
4. In my very limited experience with the patent system, I have always relied on my legal representative to advise me of any deadlines for further action (such as payment of maintenance fees).
5. As the deadline for payment of maintenance fees during the grace period (i.e., October 21, 2007) approached, my legal representative with respect to the '309 patent, a sole practitioner, did not advise me of this extended deadline to pay the required maintenance fees.
6. My legal representative with respect to the '309 patent did not, at any time, provide me with any reminders of the need to pay maintenance fees.
7. As an individual with limited experience with the patent system, I was not aware of the need to take any further action once the '309 patent issued (I had already paid substantial attorney's fees and official fees by the time the patent issued).

DLMR_880001.4

8. As an individual with limited experience with the patent system, as I have done with my two other patents, I relied on my legal representative with respect to the '309 patent to keep me apprised of the need to take any further action with respect to the '309 patent once the patent was granted.

9. On or about October, 2006, I entered into an Exclusive License Agreement with respect to the '309 patent (see Exhibit A).

10. The Exclusive Licensee of the '309 patent agreed to reimburse me for all maintenance fees (see section 8 at page 4 of Exhibit A).

11. It was not until calendar year 2009, that I first became aware that a maintenance fee was due on my above noted patent.

12. Upon learning of the need to pay the maintenance fee for the '309 patent, it was certainly my intention to proceed with such payment. Why would I not pay the maintenance fee given that my Exclusive Licensee had undertaken to reimburse me for such expenses?

13. Upon being informed that the payment of the maintenance fee for the '309 patent was overdue, it was my intention to take whatever steps were required to reinstate my patent, which I understand required the filing of a petition for the unintentional delay in paying such maintenance fee.

14. Before I was able to proceed with the filing of a petition for the unintentional delay in paying such maintenance fee, I began to experience some loss of memory and forgetfulness, which prevented me from undertaking the actions necessary to reinstate my patent.

15. On September 19, 2009, when a petition for late payment of the maintenance fee could still have been timely filed, I blacked out while driving, resulting in my collision with a tree. (See Exhibit 1, previously submitted).

16. Test results following such accident revealed that I was suffering from extremely high blood pressure, which may have explained why I blacked out while driving (and may also have contributed to my loss of memory and forgetfulness).

17. Approximately three months following such accident, I had a heart attack, which revealed that I had, for some time, been suffering from coronary heart disease, in addition to loss of memory and forgetfulness.

18. My combination of medical problems (loss of memory, forgetfulness, and coronary heart disease) prevented me from undertaking the actions necessary to reinstate my patent.

19. Over the next few months, I had two surgeries to address my heart problems. (See Exhibit 2, previously submitted).

20. The rigors of surgery, and recovery therefrom, prevented me from undertaking the actions necessary to reinstate my patent.

21. The numerous problems summarized above made my failure to timely pay the maintenance fee for my patent unavoidable.

22. It was not until January of 2011, in conjunction with the transfer of rights from the original Exclusive Licensee to a successor Exclusive Licensee (pursuant to the Exclusive License referred to in paragraph 9 above; see Exhibit A), that I was alerted to the fact that it was still necessary to pay the overdue maintenance fee for the '309 patent (see sections 2(a) and 2(b) of the attached "Consent" document, Exhibit B). Promptly upon being made aware of such circumstances, I renewed my efforts to pay the requisite fees (witness my original petition submitted January 28, 2011).

The declarant has nothing further to add.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.



Richard D. Pollak

Date of Signature: April 6, 2011

Enclosures—Exhibit A (Exclusive License Agreement)
Exhibit B (Consent)

Exhibit A

PRIVILEGED AND CONFIDENTIAL**EXCLUSIVE LICENSE AGREEMENT**

This Exclusive License Agreement ("Agreement") is entered into effective on the ~~1st~~ 17th day of October, 2006 ("Effective Date") by and between Leslie and Company, a California corporation having offices and a place of business at 30061 Hillside Terrace, San Juan Capistrano, California 92675 ("Leslie & Co." or "Leslie") and Richard Pollak, an individual residing at 3133 Via de Caballo, Encinitas, California 92024 ("Pollak"). Each of Pollak and Leslie are a "Party" and collectively are the "Parties".

This Agreement is based on the following premises and objectives:

Pollak and Leslie wish to enter into an exclusive license for products and services covered by certain patents owned by Pollak. Pollak seeks to grant to Leslie the exclusive license to the patents for a monthly payment and royalties from Leslie.

1. DEFINITIONS

The parties agree that the following terms shall have the indicated meanings:

"Furnace" shall mean the furnace identified by Contract No. 4175013001.

"Licensed Patents" shall mean all Patent Rights (i) owned by Pollak on or before the Effective Date (including, without limitation, the Patent Rights that are listed on Schedule A), and (ii) which derive from inventions that are made, created, developed, conceived or reduced to practice by Pollak after the Effective Date, in each case which claim priority to, or from, those listed on Schedule A.

"Licensed Products" shall mean all products and services covered by the Licensed Patents.

"Patent Rights" shall mean all patents and patent applications (including provisionals, patent applications and any continuations of such patent applications, claims in continuations-in-part to the extent such claims are entirely supported by the specifications of any such patent applications, and any divisionals, provisionals or substitute applications with respect to any such patent applications), any patent issued with respect to any such patent applications, any reissue, reexamination, renewal or extension (including any supplemental patent certificate) of any such patent, and any confirmation patent, registration patent, patent of addition, or inventor's certificate based on or directed to the same invention as any such patent, and all patents and patent applications anywhere in the world that at any time, directly or indirectly claim priority from, support a claim of priority of or contain substantially identical disclosure as any of the foregoing.

"Person" shall mean any natural person or any corporation, company, partnership, limited liability company, joint venture, firm or other entity, including, without limitation, a Party.

PRIVILEGED AND CONFIDENTIAL**2. LICENSE**

2.1. Grant — Subject to the terms of this Agreement, Pollak hereby grants to Leslie an exclusive, worldwide, transferable in accordance with Article 4, sublicensable license under the Licensed Patents to develop, make, have made, use, offer to sell, sell, and import Licensed Products.

3. PAYMENTS

3.1. Initial Payment — Leslie shall pre-pay Pollak Thirty-Two Thousand U.S. Dollars (\$32,000) of the first Twelve (12) month \$75,000 on the Effective Date of this Agreement, as the initial pre-payment balance of 1st year guaranteed minimum royalty.

3.2. Monthly Payments — Leslie shall pay Pollak the remaining Forty-Three Thousand U.S. Dollars (\$43,000) of the 1st year guaranteed minimum royalty, spread out over the next Twelve (12) calendar months, in eleven installments of Three Thousand Nine Hundred Nine Dollars (\$3,309) on or before the tenth business day of each calendar month for the first twelve (12) calendar months following the Effective Date; however, less any remaining balance on the initial pre-payment per Section 3.1, payments pursuant to this Section 3.2 shall be increased automatically to Eighty-Five Thousand U.S. Dollars (\$85,000) per year paid on a monthly basis to Seven Thousand Eighty-three U.S. Dollars and Thirty-three cents (\$7,083.33) per month, upon the occurrence of either thirteen (13) months from the time of execution of this Agreement or Leslie & Co.'s volume reaching 280,000 carats in total volume from the time of execution of this Agreement; and, less any remaining balance on the initial pre-payment per Section 3.1, that payments pursuant to this Section 3.2 shall be increased automatically to \$96,000 per year paid on a monthly basis at \$8,000 per month extended to through the duration of this Agreement at the occurrence of either of 25 months passing from the time of execution of this Agreement or Leslie & Co.'s volume reaching 365,000 carats in total volume from the time of execution of this Agreement.

3.3. Unit Royalty — Once total volume reaches 500,000 carats, in addition to section 3.2, Leslie shall pay royalties to Pollak at the rate of (i) Five U.S. Cents (\$0.05) per carat on each Licensed Product sold by Leslie or any of its Affiliates. Transfers between Leslie and its Affiliates shall not be considered sales for purposes of calculating royalties. Payment due under this Section 3.3, and 3.2 shall be due and payable on a calendar quarter basis in arrears, and shall be paid no later than thirty (30) days after the end of each such calendar quarter.

3.4. Furnace — Leslie shall provide Pollak a Furnace for Pollak's permitted activities under the grant-back license set forth in Article 5. All cost and expenses associated with such Furnace shall be borne by Pollak; *provided, however*, that any lease payments relating to such Furnace shall be paid by Leslie, specifically, Pollak is not liable for any outstanding payments under the GE Capital furnace lease agreement. Leslie & Co. will continue to have equal and fair access to the Furnace at their discretion until a replacement furnace is secured.

PRIVILEGED AND CONFIDENTIAL**4. TRANSFER**

4.1 Assignment — This Agreement may not be assigned or otherwise transferred by Leslie without the consent of Pollak; *provided, however*, that Company may, without such consent, assign its rights and obligations under this Agreement in connection with a merger, consolidation or sale of all or substantially all of the assets of Leslie, and *provided, further*, that Leslie's rights and obligations under this Agreement shall be assumed by its successor in interest in any such transaction.

4.2 Successors in Interest — This Agreement shall inure to the benefit of and be binding upon the respective successors, assigns, heirs, beneficiaries, and personal representatives of Pollak and Leslie; *provided, however*, that the license granted to Pollak in Section 5.1 is personal as to Pollak and may not be transferred or assigned. Any transfer or assignment by Pollak in violation of the prior sentence shall be void ab initio.

5. GRANT BACK

5.1 Grant Back — Leslie hereby grants back to Pollak a non-exclusive, non-transferable worldwide license under the Licensed Patents to develop, make, use, offer to sell, or sell Licensed Products; *provided, however*, Pollak shall not sell Licensed Topaz Products valued at more than Four Thousand U.S. Dollars (\$4,000) on a fair market basis, and *provided, further*, that Pollak shall not sell or otherwise dispose of any Licensed Topaz Product for less than fair market value, non-Topaz related items are not included.

6. ACCOUNTING/REPORTING

6.1 Accounting by Leslie — Leslie shall deliver to Pollak each calendar quarter a report identifying the total number of carats of Licensed Products sold, which report shall accompany the royalty due under Section 3.3. Leslie shall maintain accurate books of accounts and records covering the sale of Licensed Products on a per carat basis. Leslie shall be required to keep the books of accounts and records for the latest three (3) years relating to royalty payments under Section 3.3.

6.2 Audit by Pollak — Pollak shall have the right to select an independent certified public accountant to inspect the records of Leslie once per calendar year on reasonable notice and during regular business hours solely for the purpose of verifying Leslie's reports and payments under this Agreement. The entire cost for such inspection shall be borne by Pollak unless the audit reveals Leslie's payment to be in error by more than 5% with respect to a given calendar year, in which case Leslie shall reimburse Pollak for the cost of the audit. The certified public accountant conducting any audit under the terms of this paragraph shall not disclose to Pollak any information other than information directly relating to the accuracy of payments required under this Agreement. Pollak shall maintain in confidence and shall obligate the independent certified public accountant to maintain in confidence all information disclosed or developed under this paragraph. Leslie shall have the right

PRIVILEGED AND CONFIDENTIAL

to approve or reject Pollak's choice of certified public accountant; *provided, however*, that such approval shall not be unreasonably withheld.

6.3 Audit by Leslie & Co. — Leslie & Co. shall have the right to select an independent certified public accountant to inspect the records of Pollack once per calendar year on reasonable notice and during regular business hours solely for the purpose of verifying Pollack's sales under this Agreement. The entire cost for such inspection shall be borne by Leslie, unless the audit reveals Pollack's sales to be in error by more than 5% with respect to a given calendar year, in which case Pollack shall reimburse Leslie & Co. for the cost of the audit. The certified public accountant conducting any audit under the terms of this paragraph shall not disclose to Leslie & Co. any information other than information directly relating to the accuracy of payments required under this Agreement. Leslie & Co. shall maintain in confidence and shall obligate the independent certified public accountant to maintain in confidence all information disclosed or developed under this paragraph. Pollack shall have the right to approve or reject Leslie & Co.'s choice of certified public accountant

7. IMPROVEMENTS

7.1 Improvements — Pollak shall notify Leslie in writing, on a confidential basis, within ninety (90) days of the development of an invention described in clause (ii) of the definition of Licensed Patent (an "Improvement"). In the event that Pollak determines not to prepare, file, prosecute or maintain Patent Rights claiming any Improvement, Pollak shall (i) notify Leslie in writing reasonably in advance of any deadlines associated with prosecution or maintenance of such Patent Rights, (ii) if Leslie so requests, assign all right, title and interest in such Improvement and Patent Right to Leslie, and (iii) cooperate with Leslie in preparing, filing, prosecuting and maintaining such Patent Rights. All costs and expenses incurred by Leslie in preparing, filing, prosecuting and maintaining any Patent Rights pursuant to the previous sentence shall be borne by Leslie.

8. MAINTENANCE FEES

Leslie agrees to reimburse Pollak for all maintenance fees on the Licensed Patents.

9. WARRANTIES

9.1 By Leslie — Leslie represents and warrants to Pollack that as of the Effective Date:

9.1.1. Leslie has authority to enter into this Agreement and implement its terms;

9.1.2. The Person executing this Agreement on behalf of Leslie is duly authorized to do so; and

9.1.3. Leslie owns, or has leased for Pollak's benefit, a Furnace.

9.2 By Pollak — Pollak represents and warrants to Leslie that:

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9.2.1. Pollak is the sole owner of the Licensed Patents existing as of the Effective Date and has all right, title, claims, interest, and privilege arising from such ownership, free and clear of any liens, security interests, encumbrances, rights, or restrictions;

9.2.2. Pollak has fully disclosed to the relevant patent offices the identity of all inventors of the claimed subject matter in the Licensed Patents existing as of the Effective Date as required by applicable law, and will fully disclose to the relevant patent office the identity of all inventors of claimed subject matter in any License Patents which may come to exist after the Effective Date as required by applicable law;

9.2.3. The Licensed Patents existing as of the Effective Date and the subject matter of the Licensed Patents existing as of the Effective Date are (a) not the product or subject of any joint development activity or agreement with any third party, (b) not the product or subject of any joint research activity or agreement with a third party, (c) not the subject of any consortium agreement or cross-license, and (d) have not been financed in whole or in part by any third party; and any Licensed Patents which come to exist after the Effective Date and the subject matter of any Licensed Patents which comes to exist after the Effective Date shall (w) not be the product or subject of any joint development activity or agreement with any third party, (x) not be the product or subject of any joint research activity or agreement with a third party, (y) not be the subject of any consortium agreement or cross-license, and (z) not have been financed in whole or in part by any third party;

9.2.4. The Licensed Patents are enforceable as of the Effective Date;

9.2.5. Pollak has not assigned, licensed, or granted and covenants not to assign, license or grant to any other Person any rights, title, claims, interest, or privilege in the Licensed Patents;

9.2.6. Schedule A sets forth all Patent Rights owned or controlled by Pollak that relate to the coloring of gemstones and list Pollak as an inventor namely the patent family legally based on U.S. Letters Patents Nos. 5,888,819 and 6,635,309;

9.2.7 All maintenance fees that have become due on any of the Licensed Patents were paid in full and all maintenance fees that become due in the future on any of the Licensed Patents will be paid in full within thirty (30) days of the Effective Date;

9.2.8 The Licensed Patents are not now and have not been subject to any action related to validity, enforceability, inventorship, or ownership;

9.2.9. Pollak has no knowledge of any fact that could give rise to a claim that the Licensed Patents are invalid or unenforceable, and Pollak has not engaged

-- -- PRIVILEGED AND CONFIDENTIAL

in any conduct or omitted to perform any necessary act, and will not engage in any conduct or omit to perform any necessary act, that would be the grounds for invalidation of any of the Licensed Patents or preclude their enforceability;

9.2.10. Pollak has all requisite legal and corporate power and authority to enter into this Agreement, to consummate the transactions contemplated in this Agreement, and to carry out and perform his obligations under the terms of this Agreement; and

9.2.11. The execution, delivery, and performance of and compliance with this Agreement has not resulted and will not result in any violation of, conflict with, constitute a default, or give rise to a right of termination, cancellation, or acceleration of any obligation or loss of any benefit under any agreement to which Pollak is a party.

10. REEXAMINATION

Leslie agrees to commence, at its sole expense, reexamination proceedings on U.S. Patent Number 6,872,422 (Gupta et al.) within ninety (90) days of the Effective Date.

11. INFRINGEMENT CLAIMS

11.1 Infringement -- Should it become necessary, in Leslie's sole discretion, to enforce the Licensed Patent against a third party infringement of any Licensed Patent, then Leslie and Pollak agree that Leslie shall take all reasonable steps toward abating the infringement and resolving all outstanding infringement claims at Leslie's sole expense. Pollak agrees to assign to Leslie any infringement damage claims that Pollak may have.

If Leslie has not substantially abated the infringement or filed suit against the infringer(s) within 180 days after receiving notice of the infringement from Pollak, Pollak shall have the right, upon 30 day's written notice to Leslie, to file suit for infringement in Pollak's own name and at Pollak's sole expense and the sole right to settle or recover on all infringement claims.

11.2 Other Actions -- Leslie agrees to pay all reasonable costs and expenses for any reasonably action necessary to defend the validity of any Licensed Patent, including but not limited to, declaratory judgment actions and reexamination proceedings. Leslie shall be entitled to any award resulting from the defense of such an action. Leslie shall have the right to decline to defend the validity of any Licensed Patent if, after reviewing the merits of the action, Leslie decides that a reasonable likelihood of success does not exist or the defense is imprudent.

12. TERM AND TERMINATION

12.1 Term -- The term of this Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with Section 12, shall expire, on a

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country-by-country basis, upon the last to expire of the Licensed Patents in such country. For the avoidance of doubt, a Licensed Patent shall be deemed to have "expired" in a given country in the event that a final decree of invalidity has been issued with respect to such Licensed Patent.

12.2 Termination for Material Breach—Either Party shall have the right (but not the obligation) to terminate this Agreement upon written notice to the other Party if the other Party materially breaches or defaults in the performance of any of the provisions of this Agreement; *provided, however*, that such material breach or default has not been cured (if capable of being cured) within sixty (60) days after the giving of notice by the first Party specifying such breach or default, and *provided, further*, that Leslie may elect to terminate the license granted to Pollak under Section 5.1 rather than terminate the entire Agreement.

12.3 Termination for Convenience. Leslie may terminate this Agreement upon written notice to Pollak if Leslie determines, in its sole judgment, that licensing or enforcement of the Licensed Patents is not commercially reasonable, feasible or desirable.

12.4 Termination Upon Acquisition of Licensed Patents.

12.4.1 Upon Mutual consent, Leslie may terminate this Agreement upon written notice to Pollak that Leslie elects to purchase the Licensed Patents, and such termination shall be effective upon payment by Leslie to Pollak of the Appraised Value of the Licensed Patents as determined in accordance with Section 12.4.2.

12.4.2 At any time from one-year after the date of execution of this agreement, Leslie may provide written notice to Pollak, and Pollack may provide written notice to Leslie that either party desires the Appraised Value of the Licensed Patents to be determined in accordance with this Section 12.4.2. Upon delivery of such notice, Leslie and Pollak shall first endeavor in good faith for a period of ten (10) days to jointly appoint an independent firm with a national reputation as an appraiser. If the parties are unable to agree on a jointly selected appraiser within such period, each of them shall appoint an independent appraiser of nationally recognized standing and experience in valuing patent portfolios within ten (10) days after the expiration of such period. Each of Leslie and Pollak shall provide the appraiser or appraisers with any information which they reasonably request (subject to any applicable confidentiality restrictions) relating to the Licensed Patents. The appraiser or appraisers so appointed shall meet promptly to determine the fair market value of the Licensed Patents (the "Appraised Value"), such determination to be made within thirty (30) days after the appointment of the second appraiser. Such determination shall be made based on the net present value of the royalty streams outstanding at the time of such determination under Sections 3.2 and 3.3, calculated using reasonable assumptions regarding projected sales volumes for the outstanding royalty period and using such discount rate as the appraiser or appraisers may reasonably determine appropriate. If one appraiser is jointly appointed, the Appraised Value determined by such appraiser shall be final and binding on the parties. If two appraisers are appointed, the Appraised Value will be the average of the valuations received from the appraisers, unless the valuations made by the two

PRIVILEGED AND CONFIDENTIAL

appraisers differ by more than an amount equal to [ten percent (10%)]. If the valuations made by the two appraisers differ by more than an amount equal to ten percent (10%), such appraisers will jointly select a third independent appraiser of nationally recognized standing and experience in valuing patent portfolios, who shall be retained jointly by the parties. The appraisal of the third appraiser so chosen or appointed shall be given within thirty (30) days after the appointment of such third appraiser. The Appraised Value shall be deemed to be the average of the appraisals rendered by such three appraisers. In the event, however, that the lowest or the highest of the three appraisals, or both, varies by more than twenty percent (20%) from the middle appraisal, the appraisal or appraisals so varying shall be disregarded and the remaining two appraisals shall be averaged.

12.5 Effect of Termination. The expiration or termination of this Agreement shall not affect any of the Parties' respective rights and obligations accruing prior to such expiration or termination, including, without limitation, any liability of Leslie to Pollak for any payments to Pollak accruing prior to the effective date of such termination. If the termination is pursuant to Section 12.4, Pollak shall promptly assign to Leslie, as of the termination date, all of his right, title and interest in and to the Licensed Patents and execute any and all further instruments, forms of assignments and other documents, and take such further actions as Leslie may request in order to transfer all of his interest in the Licensed Patents. Section 12.5 shall survive any termination of this Agreement.

13. MISCELLANEOUS

13.2 Notices — All notices required hereunder shall be in writing and shall be sent by U.S. mail (first class) or nationally-recognized courier service (e.g., DHL, Federal Express), with all postage or delivery charges prepaid, or may be sent via facsimile, subject to confirmation via U.S. mail or nationally-recognized courier service, and shall be addressed to the parties at their addresses set forth below or to such other address(es) as may be furnished by written notice. Notices shall be deemed to have been served when delivery is actually tendered to the Party to whom the notice was sent.

Notices to POLLAK:

Richard Pollak
3133 Via de Caballo
Encinitas, Ca. 92024

Notices to Leslie:

Mr. Dan Jeffery
30061 Hillside Terrace
San Juan Capistrano, Ca. 92675

13.3 Agency — This Agreement shall not be construed as creating an agency, partnership, or any other form of legal association between the Parties. Neither party shall have any right or authority to assume or create any obligation of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.

13.4 Force Majeure — If the performance of this Agreement or any obligation hereunder (other than the payment of monies due owing hereunder) is prevented, restricted or interfered with by reason of any event or condition beyond the reasonable control of a Party, the Party so affected shall be excused from such

PRIVILEGED AND CONFIDENTIAL

performance, but only for so long as and to the extent that such force prevents, restricts or interferes with the Part's performance and provided that the Party affected gives notice thereof to the other Party and uses diligent efforts to remedy such event or conditions.

13.5 Governing Law — This Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A., without reference to conflicts of law principles except to the extent that United States federal law preempts California law, in which case United States federal law (including, without limitation, patent and federal trademark law) shall apply, without reference to conflicts of law principles.

13.6 Delay — No failure or delay by either Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced.

13.7 Separability — In the event that any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid, or otherwise unenforceable, such provision (or part thereof) shall be enforced to the greatest extent possible consistent with the stated intention of the Parties, or, if incapable of enforcement at all, shall be deemed to be deleted from this Agreement, while the remainder of this Agreement shall continue in full force and remain in effect according to its stated terms and conditions.

13.8 Headings — The headings used in this Agreement are intended primarily for reference and shall not by themselves determine the construction or interpretation of any portion of this Agreement.

13.9 Entire Agreement — This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous correspondence, negotiations, agreements and understandings between the parties, and any representations and warranties, both oral and written.

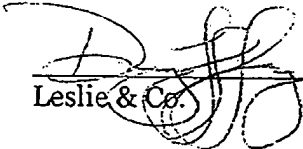
13.10 Interpretation — This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either of the Parties.

13.11 Modification — No modification, amendment, or waiver of any provision of this Agreement shall be binding upon the parties unless in writing and signed by a duly authorized representative of each party.

The parties have executed this Agreement individually or through their authorized representative.

PRIVILEGED AND CONFIDENTIAL


Richard D. Pollak


Leslie & Co.
By: Douglas Jeffery
Title: Managing Director

PRIVILEGED AND CONFIDENTIAL

SCHEDULE A

Patents

U.S. 5,888,918

U.S. 6,635,309

WO 9848944

EP 1017504

DE 69817380

AT 0247530

Exhibit B

Atty. Dkt. No. RDP001U
(043528-0100)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Richard D. Pollak
Title: PROCESS FOR THE COLOR
ENHANCEMENT OF
GEMSTONES
Appl. No.: 09/803,218
Filing Date: 3/12/2001
Patent No.: 6,635,309
Issue Date: 10/21/2003
Examiner: PARKER, Frederick John
Art Unit: 1762
Confirmation Number: 8538

**REVOCATION OF POWER OF ATTORNEY
WITH A NEW POWER OF ATTORNEY AND
CHANGE OF CORRESPONDENCE ADDRESS**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I am the Applicant/Inventor Application No. 09/803,218 filed March 12, 2001, and all continuing applications thereof.

I hereby revoke all prior Powers of Attorney submitted in this application, and hereby appoint the registered patent attorneys and patent agents associated with Customer Number:

30542

-1-

DLMR_882386.1

DLMR_000000.1